Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Dkt. No. 96-98 (Phase 1)

To: The Commission

COMMENTS OF THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

by

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SUMMARY

SNET offers the following suggestions in its Comments in the proceeding to adopt regulations implementing Sections 251 and 252 of the Communications Act (CC Dkt. No. 96-98) (Phase I):

- The Commission may appropriately adopt regulations that give State regulators and exchange service competitors guidance on how to implement Sections 251 and 252. But its regulations should not be so detailed that they substantially constrain the ability of exchange competitors and State regulators to implement the provisions in a way that meets local conditions.

- With regard to regulations implementing the interconnection requirements of Section 251(c)(2):

  - The Commission may appropriately adopt the two specific rules defining "technically feasible point" which it has suggested. In addition, it should clarify the term "technically feasible" in ways that USTA proposes in its comments.

  - The Commission should not adopt a rule which seeks to define situations under which the terms and conditions of interconnection will be deemed "just, reasonable, and nondiscriminatory."

  - Nor should the FCC adopt a rule defining situations under which a particular interconnection arrangements will be deemed "equal in quality" to some other interconnection arrangement.

  - The Commission should make clear that the same interconnection requirements applicable to LECs also will be generally applicable to CLECs. This reciprocity principle also should apply with regard to network unbundling requirements (§251(c)(3)), resale requirements (§251(c)(4)), collocation requirements (§25(c)(6)), and number portability requirements (§251(b)(2)).

- If the Commission adopts regulations to implement the collocation provisions in Section 251(c)(6), those regulations should merely apply -- to exchange service -- the same collocation requirements the agency put in place for interstate access service three years ago.

- With regard to regulations implementing the unbundling requirements of Section 251(c)(3):

  - The Commission may appropriately require that a LEC unbundle its network into each of the following components: (1) local loops, (2) local switching, and (3) network elements corresponding to the current interstate switched access transport and special access rate elements. The agency should not require a LEC to unbundle its network into more elements than this.

  - The Commission may appropriately make clear that public utility commissions have authority to require a LEC to further unbundle its network at any time in the future in any way that is technically feasible.

  - The Commission may appropriately hold that a LEC will have the burden of proof to demonstrate technical infeasibility in any dispute over whether interconnection at a particular point is feasible.

  - The Commission should neither try to define the term "nondiscriminatory basis"; nor should it seek to define the manner in which unbundled elements must be provided, serviced, or maintained.

- With regard to regulations implementing the requirements in Sections 251(c)(2) and 251(c)(3) concerning the pricing of interconnection and unbundled network elements:

  - The Commission should not require that a LEC price interconnection arrangements and unbundled network elements based on the pricing standard in Section 252(d)(1) so that the subscribing CLEC may use the interconnection arrangement or unbundled element to provide <u>any</u> service, including interstate access service. Instead, while CLECs may use the interconnection arrangement or unbundled elements in order to provide both exchange service and exchange access service, the Commission should require that the price be set under the pricing standard in Section 252(d)(1) only to the extent the facilities are used to provide exchange service.

- The Commission may not lawfully clarify Section 252(d)(1)'s pricing standard in any way that has the effect of substantially eliminating the discretion of competitors and State regulators to determine the appropriate rate levels, structures, or formulas in specific situations.

- Any price ceiling adopted by the Commission must permit recovery of the LEC's total costs, including joint and common costs and embedded costs. A requirement that price be based on either LRIC or TSLRIC would not permit a LEC to recover its total costs.

- With regard to regulations implementing the resale provisions of Section 251(c)(4):

  - The Commission should prohibit CLECs from obtaining any service offered at a subsidized price to one category of retail customer for resale to another category of customer.

  - The Commission should give public utility commissions discretion to prohibit a CLEC from using the resale provisions in a situation where State regulators conclude that failure to prohibit resale would substantially increase the losses suffered by the LEC in providing the subject service at retail.

  - A public utility commission should have discretion to prohibit a CLEC from using the resale provisions to resell a LEC's discounted rate plan if the LEC makes available for resale the service on which that discounted rate plan is based.

  - The Commission should clarify the manner in which the "wholesale" rate should be calculated for purposes of the resale provision. In comments filed today, USTA offers several suggestions to accomplish this. SNET agrees with those suggestions.

- With regard to regulations implementing the procedures in Section 251(f)(2) for exempting LECs with fewer than two percent of the country's local access lines from the requirements of Sections 251(b) and 251(c):

  - The Commission should require that State regulators grant an exemption or modification

based on "technical infeasibility" by defining that term to mean technically difficult or otherwise technically unreasonable.

- The Commission should consider clarifying that a public utility commission must provide the requested relief based on "economically burdensome" impact to the petitioning LEC if the LEC demonstrates (1) that the requirement has the effect of requiring the LEC to provide a service at a price below its total cost to provide that service or (2) that the LEC has no reasonable way fully to recover its total cost to comply with the requirement.

- The Commission should make plain that the authority to provide a "modification" of a requirement is independent of the authority to provide for "suspension" of the requirement. In addition, the Commission should make clear that the authority to grant a "modification" gives State regulators broad discretion to change the nature of any requirement imposed by Sections 251(b) and 251(c) in a substantive way.

- The Commission should clarify a public utility commission's authority to "suspend enforcement" of the requirement by making clear that (1) enforcement must be suspended if the petitioning LEC makes a prima facia case in its petition for the relief it requests, (2) enforcement will be suspended automatically until the agency decides whether that prima facia case has been made, and (3) a decision to suspend enforcement of the requirement pending issuance of a final decision on the LEC's petition will be effective until the order disposing of the petition is no longer subject to reconsideration or review.

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COMMENTS OF THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

As the Commission undertakes the task of implementing Sections 251 and 252 of the Communications Act,[1/] The Southern New England Telephone Company ("SNET") offers its comments on key issues raised in the Notice of Proposed Rulemaking ("NPRM").

As an initial matter, SNET wishes to underscore and support two overarching principles proposed by the United States Telephone Association ("USTA") to guide the Commission's deliberations in this proceeding. First, any interpretation of Sections 251 and 252 must recognize that a fundamental goal of the 1996 Act is to foster facilities-based competition in the local exchange market. This goal recognizes that new entrants ("CLECs") should be encouraged to interconnect their competing networks with each other and with incumbent LECs ("LECs"). The Commission must carefully craft its rules to ensure that incentives exist for competitors to provide service by using their facilities rather than relying almost entirely on LEC facilities. Second, the Commission's determination

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[1/] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

in this proceeding should (1) recognize the interrelationship of local interconnection, access charges and universal service; (2) be administratively simple; and (3) accommodate the transition to competition.

INTRODUCTION

A key issue before the Commission in this proceeding is how to properly balance the specificity of Federal standards required to fulfill the FCC's obligations under the Act[2/] with the need of the States to have maximum flexibility in interpreting and adapting those Federal standards to unique and varying local circumstances. Alternative approaches can range from broadly defining the responsibilities and roles of regulators and exchange competitors, to providing detailed rules with much specificity.

Recognizing that the role of national guidelines is critical to achieving the goal of local exchange competition, SNET proposes that the Commission limit the exercise of its authority in favor of providing significant flexibility to the States. While this is a revolutionary approach which requires the Commission -- and all other parties -- to step back from traditional roles, it offers a real opportunity for changes that are in the interest of consumers in light of the changing telecommunications landscape.

[2/] The Commission's mandate under the Act is "to provide a procompetitive, de-regulatory national policy framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." Joint Explanatory Statement of the Committee of Conference at 113, Telecommun. Act of 1996, Rep. No. 458 (104th Cong., 2d Sess.).

In adopting rules to implement Sections 251 and 252, the Commission can, and should, fashion Federal guidelines that encourage and empower the States to move quickly to implement a competitive local exchange environment. SNET suggests that the Commission can do this by providing rules that do not undercut pro-competitive initiatives already undertaken by the States and by setting deadlines for implementation of local exchange competition for States that have not yet acted.

As the Commission fashions its rules, the following principles also should guide its efforts:

(1) Federal rules should provide maximum flexibility and latitude to State regulators;

(2) Federal rules should encourage voluntary agreements between providers, and discourage unreasonable or uneconomic demands for interconnection and wholesale rates;

(3) Federal rules should not require states to roll back pro-competitive initiatives currently in effect;

(4) Federal rules should not limit providers' selection or use of technology, force uneconomic or inefficient technology deployment; reduce network efficiency or reliability, impair existing services, or provide unreasonable barriers to the recovery of costs for the provision, use or maintenance of network elements; and

(5) Federal rules should not unfairly benefit a particular class of providers, nor should they penalize or inhibit another class of providers.

This approach allows for variations in the architecture of individual LECs, and, SNET submits, is the best approach.

Under this approach, the Commission would provide guidance on the factors or criteria that must be considered in implementing Sections 251 and 252. But the prescription of "technically feasi-

ble"[3] points for interconnection beyond those generally agreed upon, the specific locations where collocation is "practical,"[4] the terms and conditions in LEC/CLEC contracts that are "just . . . and reasonable,"[5] and restrictions on the resale of LEC retail services that are deemed "unreasonable"[6] would be left to the States for decision based on the cost structure of the LEC, the LEC's existing planned infrastructure, and State-specific pricing policies.

Similarly, Federally prescribed pricing guidelines governing interconnection and unbundled network elements should give the States latitude to reflect local circumstances. For example, the Commission should allow States to include depreciation expense for embedded plant in the pricing of network elements when local conditions make it reasonable to do so. The States are in the best position to assess past recovery of these costs, and the extent to which the public interest requires that they be included.

Not only will rules that accommodate very real differences among the LECs result from the flexible regulatory approach that SNET suggests, this approach also will produce a model that is adaptable to changes in technology, markets, and network architectures. Moreover, providing flexibility to the States will tend to

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[3] Sec. 251(c)(2).

[4] Section 251(c)(6).

[5] Sec. 251(c)(2)(D), Sec. 251(c)(3), Sec. 251(c)(6).

[6] Sec. 251(c)(4)(B).

foster the rapid development of competition, so long as time lines and general Federal principles are established.

SNET submits that the model described above is better suited to achieve the objectives of Sections 251 and 252 than a model under which Federal rules would be more interventionist in nature. First, a Federal model that defines the speed of entry for local exchange competition, technical interconnection and primary network elements can accelerate implementation of the Act, but a Federal model that is too detailed would slow the introduction of competition. This could be the result since detailed Federal rules could require State regulators and exchange competitors to renegotiate prior interconnection agreements, reopen previously completed State decisions, and consider detailed Federal requirements that may not be appropriate to local conditions. For example, rules requiring the unbundling of every imaginable network element, rather than encouraging a standard for open networks and interconnection, would inevitably slow competition. Initially, SNET begun discussions with CLECs in the context of potentially thousands of network elements. Ultimately, all parties recognized that it takes a lot of time to put the supporting processes and systems in place for the core elements that are essential to competition, and efforts focused on those core elements. Today, SNET offers a comprehensive package of those core elements.

Moreover, SNET believes that an approach under which the Commission implements Sections 251 and 252 using detailed Federal rules is inconsistent with the philosophy of these provisions. At

their heart, Sections 251 and 252 seek to facilitate exchange competition by relying first on voluntary negotiations between LECs and CLECs, second on meaningful oversight of the negotiations by public utility commissions, and only third on FCC regulatory policies. The Commission would act contrary to this Congressional vision if its regulations end up elevating the FCC's third tier status in this three tier process and thereby constraining the flexibility of exchange competitors and public utility commissions to apply Sections 251 and 252 in a way that best meets local conditions.

The exigencies of time also call for the Commission to avoid adopting regulations that substantially constrain the ability of affected parties to implement Sections 251 and 252 in a way that best meets local conditions. Without question, this proceeding is the most complex ever conducted by the Commission. It involves literally dozens of important public policy questions. Congress has mandated that the agency adopt regulations implementing these provisions by no later than August 8 of this year, less than three months from today. This deadline requires the Commission to perform a monumental task within an extraordinarily short period of time. Even if other factors counselled in favor of detailed Federal rules, the short deadline is a powerful reason favoring the adoption of regulations that give competitors and State regulators considerable flexibility to implement these statutory provisions in the way they believe best meets local conditions.

The Connecticut experience illustrates that the regulatory model SNET proposes will work. Over the past eighteen months, Connecticut has addressed and resolved many issues covered by Sections 251 and 252, thereby opening, as shown below, Connecticut's exchange and in-state toll markets to competition in ways that Sections 251 and 252 mandate. Moreover, we also show below that these market opening measures occurred as a result of State public utility commission action and negotiations between SNET and its CLEC competitors, not as a result of detailed Federal rules.

Eighteen months before Sections 251 and 252 were enacted, the Connecticut Department of Public Utility Control ("DPUC") initiated regulatory proceedings to open SNET's core exchange and in-state toll markets to competition. Since that time, the DPUC has completed more than a dozen proceedings and has required many of the market opening measures which Sections 251 and 252 mandate. Already, ten companies, including AT&T, MCI, and Sprint, have been certified to provide exchange service under procedures which provide that an application for certificate either will be approved or denied within 60 days of the date it is filed.[7/] In addition, the

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[7/] See Decision in Dkt. No. 94-07-03, DPUC Review of Procedures Regarding the Certif. of Telecom. Companies and of Procedures Regarding Requests by Certified Companies to Expand Auth. Granted In Certificates of Public Convenience and Necessity (March 15, 1995) (establishing procedure by which applications to provide exchange service competition are granted). See also Decision in Dkt. 96-01-06 (Feb. 28, 1996) (authorizing AT&T to provide exchange service throughout Connecticut); Decision in Dkt. 94-07-03 (May 16, 1995) (authorizing Teleport Commun. Group to provide exchange service throughout Connecticut); Decision in Dkt. 95-08-12 (Sept. 13, 1995) (authorizing MCI Metro to provide exchange service in the Torrington and Hartford Central areas); Decision in Dkt. 95-07-08 (continued...)

DPUC has implemented numerous specific market opening measures which are consistent with the plain meaning of Sections 251 and 252:

- Just as Section 251(c)(2) contemplates, the DPUC has required that SNET interconnect with a CLEC network at any SNET end office, at any SNET tandem office, or at any mutually agreeable meet point.[8/]

- Just as Section 251(c)(3) mandates, the DPUC has required SNET to provide exchange service competitors, on an unbundled basis, the specific network elements which competitors have requested (loops, ports, interoffice transport, and meet point transmission facilities).[9/]

- Just as Sections 251(c)(2) and (3) demand, the DPUC has specified the methods by which competitors may interconnect their networks with SNET's network.[10/]

[7/](...continued)
(Aug. 16, 1995) (authorizing Brooks Fiber to provide exchange service in the New London and Hartford Central areas); Decision in Dkt. 95-05-20 (June 28, 1995) (authorizing MFS Intelenet to provide exchange service in the New London, Danielson, Stamford, Torrington, Hartford Central, and Hartford West areas); and Decision in Dkt. 95-10-32 (Nov. 29, 1995) (authorizing Cable & Wireless to provide exchange service in the New London, Danielson, Torrington, New Haven, Danbury, Stamford, Hartford West, Hartford Central, and Hartford East areas); Decision in Dkt. 96-03-02 (Apr. 9, 1996) (authorizing LCI International Telecom. Corp. to provide exchange service on a statewide basis); Decision in Dkt. 96-01-018 (Feb. 28, 1996) (authorizing LDDS WorldCom to provide exchange service on a statewide basis); Decision in Dkt. 96-03-32 (May 1, 1996) (authorizing Spring Communications Company to provide exchange service on a statewide basis); and Decision in Dkt. 96-04-09 (May 15, 1996) (authorizing WinStar Wireless of Connecticut, Inc. to provide exchange service in the Bridgeport, Danbury, Danielson, Hartford West, New Haven, New London, Stamford, Torrington and Waterbury areas).

[8/] Decision in Dkt. No. 94-10-02, Investig. Into the Unbundling of The So. New Eng. Tel. Co's. Local Telecom. Network, (Sept. 22, 1995, recon. Jan. 17, 1996).

[9/] Id.

[10/] Id.

- Just as Section 251(c)(3) requires, the DPUC has set interim rates for SNET's unbundled network elements,[11] and SNET intends to file a tariff proposing final rates in May 1996.

- Just as Section 251(c)(6) directs, the DPUC has instructed SNET to permit exchange service competitors to physically collocate their equipment inside SNET's premises.[12]

- Just as Section 251(b)(5) mandates, the DPUC has adopted a reciprocal compensation plan requiring that all competing exchange carriers compensate each other for terminating exchange traffic via a bill-and-keep system for the first nine months of the competing carrier's operation. At the end of the nine-month period, reciprocal compensation will be provided via cost-based termination charges now under development unless affected exchange carriers agree to continue bill-and-keep.[13]

- Just as Section 251(b)(5) compels, the DPUC has required that SNET provide the customers of all competing exchange carriers with telephone number portability via call forwarding (or a similar method) until a permanent means to provide number portability has been developed and deployed.[14]

- Just as Section 251(b)(3) dictates, the DPUC has ordered SNET, by December 1 of this year, to provide equal access to all carriers for the provision of all in-state toll calls.[15] SNET presently provides equal access arrangements for in-state toll calls in more than 50 percent of its end offices and will provide equal access in 100 percent of end offices by year-end 1996.

- Just as Section 251(b)(3) contemplates, DPUC policy already requires that SNET provide substantially all of

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[11] Decision in Dkt. No. 95-06-17, Applic. of The So. New Eng. Tel. Co. for Approval to Offer Unbundled Loops, Ports and Associated Interconn. Arrangements (Dec. 20, 1995).

[12] Decision in Dkt. No. 94-10-02, supra.

[13] Id.

[14] Id.

[15] Decision in Dkt. No. 94-02-07, So. New Eng. Tel. Co. Implementation of Intrastate Equal Access and Presubscription (Reopening) (Oct. 26, 1994, recon. Aug. 9, 1995).

> its exchange customers, by December 1996, the right to subscribe to the in-state toll and interstate toll service of different interexchange carriers.[16/]

The Connecticut experience also teaches that negotiations between LECs and CLECs can produce agreements which are consistent with Sections 251 and 252 without the existence of regulations designed to control the outcome of these negotiations. Although the DPUC has issued orders mandating the market opening measures described above, many of those measures resulted largely from successful negotiations just as Section 252 contemplates. When the DPUC first began considering market opening measures, it insisted that all interested parties seek to reach agreement on a variety of matters. As a result of that process, SNET reached an accord with all interested parties on measures to facilitate competition in many of the ways that Sections 251 and 252 mandate. Among other things, that agreement deals with interconnection, network unbundling, physical collocation, and telephone number portability. And it deals with these matters in a way that is consistent with the plain meaning of Sections 251 and 252. Moreover, the signers -- SNET, AT&T, MCI, Sprint, MFS Intelenet, Teleport, Cablevision Lightpath, the Connecticut Attorney General, and the Connecticut Office of Consumer Counsel -- constitute a broad spectrum of CLECs and State government interests. Upon review, the DPUC adopted the agreement as DPUC policy after finding that it constituted "irrefutable evidence of the ability to achieve reasonable agreement on issues of common concern to the industry and the

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16/ Id.

public."[17] For the Commission's convenience, a copy of the agreement, titled "Unbundling and Resale Stipulation", is attached to these Comments.

DISCUSSION

With these principles as background, we now comment on the specific regulations which the Commission has proposed in order to implement various matters covered by Sections 251 and 252. We comment on each matter in the order in which it is discussed in the FCC's Notice.

I. Regulations to Implement the Interconnection Requirements of Section 251(c)(2)

The FCC first requests comments about what regulations it should adopt in order to implement three different aspects of Section 251(c)(2) of the Act. That provision requires that a LEC permit CLECs to interconnect their facilities with the LEC's network (1) at "any technically feasible point"; (2) on terms that are "just, reasonable, and nondiscriminatory"; and (3) in a manner that is "equal in quality" to the interconnection the LEC provides to other parties. Below, we respond to the Commission's proposals concerning each of these three matters.

SNET supports two rules the FCC proposes in order to help ensure that LECs give CLECs an opportunity to interconnect with LEC networks at any "technically feasible point." The first rule would state that technical infeasibility would include (but would not be limited to) a situation where either risk to network reliability

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[17] Decision in Dkt. No. 94-10-02, supra, at 51.

would result from honoring the request to interconnect at a specific point, or where existing service (either at that point or at another point) would be impaired.[18] The second rule would state that the LEC would have the burden of proof to demonstrate infeasibility in a dispute over whether interconnection at a particular point is technically feasible.[19] SNET supports these rules because they are consistent with the regulatory approach we favor of providing flexibility to implement Sections 251 and 252 in a way that meets local conditions. Both proposed rules would provide meaningful guidance to competitors and State regulators in determining whether particular interconnection proposals are "technically feasible" while simultaneously preserving flexibility to determine whether a particular proposal is technically feasible based on local conditions.

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[18] Notice at ¶56.

[19] Id. at ¶57. The FCC also proposes a rule which would establish a rebuttable presumption that interconnection at the requested point is technically feasible if the LEC "currently provides, or has provided in the past, interconnection . . . at that point." Id. But that rule is unnecessary because it would add nothing to a rule placing the burden of proof on the incumbent LEC to demonstrate technical infeasibility. While a rule establishing a rebuttable presumption is unnecessary, SNET would oppose any rule establishing an irrebuttable presumption of technical feasibility merely because the LEC already provides, or previously provided, interconnection at the requested point. It would be arbitrary and capricious for the Commission to presume -- irrebuttably -- that interconnection at a specific point is technically feasible merely because interconnection at that point was provided by the LEC previously or is provided today to one or more CLECs. There may be any number of reasons that would preclude interconnection at the requested point today -- such as a change in network architecture -- even if interconnection was successfully provided at that point previously. Similarly, a variety of reasons -- including absence of space -- may justify denying a CLEC with interconnection at specific points where other CLECs already are interconnected.

The Commission also should clarify the term "technically feasible" in ways that USTA proposes in its comments filed today. In those comments, USTA urges the Commission to make clear that "technically feasible" does not mean "technically imaginable" or "technically possible", and the agency is asked to clarify that the concept of "technical feasibility" inherently includes consideration of economic reasonableness. USTA also has proposed a way for the Commission to define "technically feasible" in a manner that will provide useful guidance to exchange competitors and public utility commissions without needlessly constraining flexibility to decide disputes about whether specific proposals are technically feasible based on the specific factual circumstances at issue.

While SNET does not object to the two rules proposed by the Commission to help ensure that LECs provide interconnection at all technically feasible points, it does urge the Commission to refrain from adopting any rule that seeks to define situations under which the terms and conditions of interconnection will be deemed "just, reasonable, and nondiscriminatory."[20/] SNET supports USTA's position that specific terms and conditions are best and most efficiently resolved through the negotiation and arbitration process. Carriers have considerable experience in negotiating terms of service in the context of both carrier-to-carrier interconnection agreements as well as in the context of service contracts with telecommunications end user customers. State regulators likewise

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[20/] Id. at ¶61.

have considerable experience in adjudicating disputes on such matters.

For the same reasons, we urge the Commission not to adopt a rule defining the circumstances under which interconnection arrangements will be deemed "equal in quality" to interconnection arrangements provided to others.

There is one Federal rule which would help LECs and CLECs agree more readily on interconnection terms. Rather than applying to LECs alone the interconnection requirements it adopts under Section 251(c)(2), the Commission should make clear that its requirements will be applicable to CLECs as well. Interconnection rules that apply equally to LECs and their CLEC competitors would encourage reasonable and open negotiations and also should lead to the rapid development of competition. As a practical matter, in most cases interconnection requirements need to be reciprocal. All LECs and CLECs will have to provide interim number portability, for example, if customers are to have real choices in the local market.

Even if the FCC's authority under Section 251(a) were limited to mandating the terms of interconnection for the provision of interstate service alone, the Supreme Court has held that the agency may apply its regulatory requirements -- including interconnection requirements -- in situations not normally within its jurisdiction when failure to do so would effectively negate the FCC's ability to carry out a statutory responsibility with which it

is explicitly charged.[21] For reasons described above, the Commission's authority to facilitate competition in the exchange market could be jeopardized unless it makes clear that CLECs have the same interconnection obligations as LECs.[22]

II. Regulations to Implement the Collocation Requirement of Section 251(c)(6)

The Commission next seeks comments about what rules it should adopt to govern three different aspects of Section 251(c)(6) of the Act. That provision requires LECs (1) to provide for physical collocation of a CLEC's "equipment", (2) to provide for such physical collocation at the "premises" of the LEC, and (3) to exempt LECs from the physical collocation requirement if physical collocation is impractical for "technical reasons" or because of "space limitations."

If the FCC wants to adopt requirements that deal with these three matters, its rule should merely apply -- to exchange service -- the same physical collocation requirements the agency put in place for interstate access service three years ago. Those earlier requirements, adopted after a lengthy rulemaking devoted narrowly to collocation issues, dealt with all three matters about which the agency expresses an interest now . Specifically, they defined types of "transmission equipment" that an interconnector could

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[21] Louisiana Public Serv. Comm'n v. FCC, 476 U.S. 355, 375 n.4 (1986).

[22] This same principle of reciprocity should be applicable to negotiations about network unbundling (§251(c)(3)), resale (§251(c)(4)), collocation (§251(c)(6)), and number portability (§251(b)(2)) as well.

collocate and types of "premises" at which collocation could occur, and they described situations in which space and technical considerations would justify failure to provide physical collocation.[23/]

Although the Commission states that additional rules may be desirable on these three matters due to "the new statutory requirements",[24/] it does not explain what rules it has in mind or why they may be justified. Moreover, a review of the Act suggests nothing in either the new statutory collocation provisions or elsewhere that would require additional FCC rules dealing with any of these three matters.

Time constraints also are a powerful reason to resist adoption of collocation requirements beyond those applicable to interstate access. The FCC may reasonably anticipate that most LECs will be able technically and economically to comply with its earlier collocation rules since they were adopted several years ago after a lengthy investigation narrowly focused on collocation issues. By contrast, the ability of LECs to comply with any additional requirements is much more speculative, particularly given all the changes that must be made by LECs to comply with the other provisions of Sections 251 and 252.

[23/] See Special Access Expanded Interconn. Order, 7 FCC Rcd. 7369 (1992). While the U.S. Court of Appeals for the D.C. Circuit invalidated the FCC's earlier collocation requirements, it did so only because it found that the FCC lacked statutory jurisdiction at that time to mandate physical collocation.

[24/] Notice at ¶73.

III. Regulations to Implement the Unbundling Requirements of Section 251(c)(3)

Section 251(c)(3) requires simply that incumbent LECs provide CLECs with unbundled access to network elements on reasonable and nondiscriminatory terms.[25] Yet in its Notice, the Commission asks for comments on the issue of whether new FCC rules should require LECs to provide each of at least 14 separate physical network elements on an a-la-carte basis.[26] In addition, the Notice suggests the possibility that new FCC regulations might give CLECs a Federal right to select on an a-la-carte basis from among numerous discrete telecommunications services provided by certain physical network components.[27] For example, this might give CLECs a Federal right to demand that an incumbent LEC provide the CLEC with

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[25] The Commission hypothesizes that Section 251(d)(2) may require that it establish Federal rules on network unbundling. Id. at ¶77. But it does not explain how this provision could be read to mandate Federal unbundling rules. In fact, Section 251(d)(2) does not mandate Federal unbundling rules. Instead, by its terms it requires only that the FCC consider certain specific factors in the event it decides, in the exercise of its discretion, to adopt unbundling rules.

[26] The unbundled physical network elements discussed by the Commission cover (a) three unbundled local loop elements (local loop feeder plant, local loop distribution plant, and local loop concentration equipment) id. at ¶97; (b) three unbundled switching elements (end office switching, tandem office switching, and ports) id. ¶¶101, 105; (c) three unbundled transport elements (end office-to-tandem office trunking, tandem office-to-serving wire center trunking, and serving wire center-to-CLEC point of presence trunking) id. at ¶105; and (d) five unbundled database and signalling system elements (signalling links, signal transfer points, service control points, non-proprietary signalling protocols, and software used to create call processing services) id. at ¶¶109, 111.

[27] Id. at ¶99, 111.

one or more discrete services provided by central office switching -- like call waiting -- but not switching itself.

In fact, new Federal unbundling rules of the sort described above would slow the development of competition in the exchange service market in several ways. First, rules defining numerous separate unbundled physical network elements would make the regulatory job of ensuring that each element is priced at cost (plus a reasonable profit) in the absence of a negotiated agreement vastly more complicated than if a LEC must provide fewer unbundled elements. Section 252(d)(1) requires that each unbundled element be "based on cost" and may include a "reasonable profit." This task of determining the appropriate "cost" for a network element may be complicated and contentious even if a LEC is required to provide four or five unbundled elements. But the task will be nearly impossible if a LEC must price each of numerous elements based on the cost of providing that element.

Moreover, FCC rules mandating that LECs provide each of the 14 physical network elements the FCC proposes (or anywhere near that many elements) inevitably would lead to petitions for waiver of the agency's unbundling requirements because it is not technically feasible for LECs to provide separately many of those elements. For example, the Commission states that it is considering adoption of a requirement that LECs provide three loop subelements on an unbundled basis (loop feeder plant, loop distribution plant, and loop concentration equipment).[28/] But it would not be technically

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[28/] Id. at ¶97.

feasible for SNET to offer these three elements separately, particularly given its new distribution plant architecture which is based on hybrid fiber/coaxial plant. It is imperative that requirements not be structured in a manner that inhibits the development and deployment of new technology or network architectures, particularly when no real public interest would be served.

The Commission's own recent experience and conclusion that rules requiring substantial network unbundling are inherently unworkable should be instructive here. In 1986, the FCC envisioned substantial unbundling of network components as a prerequisite for implementation of its Open Network Architecture program.[29/] However, a few years later the agency found that substantial unbundling mandated by regulatory fiat was not practically achievable.[30/] Attempting to define a large number of unbundled network elements in this proceeding would repeat the mistakes of the past.

If public utility commissions were incapable or unwilling to consider reasonable unbundling proposals, more FCC intervention, although not at the level of unbundling suggested, might have merit. But that is not the case as the FCC notes. Rather than criticizing utility commissions, it instead lauds them in the Notice for working diligently on these very issues. For example, the agency concludes that the New York Public Service Commission already has "anticipated and addressed many of the problems asso-

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29/ Computer III, 104 F.C.C.2d 958, 1064-66 (1986).

30/ Computer III Remand Proceeding, 6 FCC Rcd 7571, 7600-01 (1991).